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Attorneys for Plaintiff, DePetrus Family Associates 2, LLC

DEPETRIS FAMILY ASSOCIATES 2, LLC

Plaintiff,

v.

MEDFORD TOWNSHIP ZONING BOARD
OF ADJUSTMENT,

Defendant.

:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION
: BURLINGTON COUNTY

:
: CIVIL ACTION

:
: DOCKET NO. _____

:
: **COMPLAINT IN LIEU OF**
: **PREROGATIVE WRITS**
:
:

Plaintiff, DePetrus Family Associates 2, LLC (“Plaintiff”), by and through its undersigned attorneys, hereby alleges as follows:

1. Plaintiff owns the real property located at the intersection of Tuckerton and Taunton Roads and designated as Block 2702.01, Lot 12.03 in the Township of Medford, Burlington County (“Property”).

2. The Township of Medford Zoning Board of Adjustment (“Board”) is a public body constituted pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (“MLUL”), having offices at 17 North Main Street, Medford, NJ 08055.

3. Plaintiff’s Property in Medford consists of 0.912 acres in the CC Community Commercial Zoning District.

4. The CC zone permits a wide variety of commercial uses, including shops and stores for retail sales.

5. The CC zone also permits food service establishments including sit-down restaurants, cocktail lounges, coffee shops and cafes, catering service, bakery, pastry, candy, confectionery or ice cream shops.

6. Banks are also permitted in the CC zone, including banks with drive-in facilities.

7. An inactive PNC Bank with a drive-thru is located at the Property. The PNC Bank vacated the location some time ago and the space has been unoccupied since then.

8. In addition to the vacant PNC Bank, the other three properties located at the intersection of Taunton and Tuckerton Roads are occupied by two gas stations and an outdated strip shopping mall.

9. In order to improve the site and pioneer the revitalization of properties at this important intersection, Plaintiff prepared a Land Development Application (“Application”) requesting a use variance to demolish the existing PNC Bank and construct an aesthetically pleasing retail building accommodating up to four tenants, including a Dunkin Donuts with a drive-thru.

10. The DePetrìs Family, LLC, previously proposed a Dunkin Donuts with a drive-thru at the Village at Taunton Forge Shopping Center.

11. The Zoning Board denied the application to develop a Dunkin Donuts with a drive-thru at the Village at Taunton Forge Shopping Center, which was memorialized by Resolution #2017-24, adopted by the Board on July 19, 2017. The Board’s action in this regard was later reversed by the Law Division but is currently under appeal by the Board.

12. In denying the prior application, the Board indicated in Resolution #2017-24 that: “The Zoning Board finds that a more suitable and appropriate location for a Dunkin Donuts with drive-thru may exist on the opposite side of Tuckerton Road (e.g. where the recently vacant

PNC building is located). There, the AM traffic heading westbound to Evesham Township could readily egress from a Dunkin Donuts drive-thru....”

13. Plaintiff therefore proceeded by obtaining a professional engineering report, conducting traffic studies, and consulting with an architect and planner in preparing a Land Development Application to permit development of the Property.

14. On April 26, 2019, Plaintiff submitted the Application to the Board seeking a use variance, pursuant to N.J.S.A. 40:55D-70(d)(1), and bulk variances to demolish the existing building and construct a 6,804 SF building containing space for up to three tenants, to include a 1,804 square foot Dunkin Donuts with a drive-thru and up to three adjoining retail or other uses permitted in the Community Commercial District.

15. Although a coffee shop is an expressly permitted use in the CC zone, and other uses such as banks and pharmacies with drive-thru facilities are located and permitted in the CC zone, a coffee shop such as Dunkin Donuts with a drive-thru window is classified as a prohibited “fast food restaurant” in the CC zone.

16. Specifically, the Medford Zoning Ordinance defines any restaurant with drive-thru window service as a “fast food restaurant,” and in the CC zone, a fast food restaurant is a permitted conditional use only if such use existed as of June 1, 1992, as per Code Section §411A:20 of Land Development Ordinance.

17. Since the proposed Dunkin Donuts restaurant would be a new “fast food restaurant” at the Property, a use variance is required to permit a coffee shop with a drive-thru.

18. After participating in a workshop and soliciting the input of the Board’s professionals, Plaintiff submitted the Application, which requested a use variance as well as bulk variances relating to minimum lot size, lot coverage and buffers.

19. Plaintiff gave adequate public notice of the Application and a hearing was scheduled for June 19, 2019.

20. At the time of the initial hearing on June 19, 2019, Plaintiff first presented testimony from James DePetrìs, a member of Plaintiff.

21. Mr. DePetrìs testified that the new proposed development to be named "Taunton Corners Place" was expected to spur redevelopment at the Taunton/Tuckerton Road intersection, which was in need of new retail uses.

22. Plaintiff also presented the testimony from its professional engineer, Greg Elko, P.E. at the June 19, 2019 hearing.

23. Mr. Elko offered the Board a summary of the project, existing conditions of the Property, and the surrounding uses.

24. Mr. Elko advised that the development proposal would maintain the existing right in/right out ingress/egress on Tuckerton Road.

25. To facilitate on-site traffic circulation, the Application also proposed a full movement access point at Taunton Road.

26. Mr. Elko informed the Board that Plaintiff would be required to dedicate 0.014 acres of the land to the County of Burlington (approximately 600 square feet) to accommodate a sidewalk, resulting in a size reduction of the parcel to 0.898 acres.

27. Mr. Elko explained the challenges faced by the applicant with regard to meeting the lot coverage and buffer requirements of the Zoning Ordinance, from which variance relief was being sought.

28. Plaintiff next presented testimony at the hearing on June 19, 2019, from David Witt, a licensed architect, concerning the proposed building's appearance.

29. Mr. Witt described the conceptual design of Taunton Corners Place, which is cognizant of the Township's vernacular, delivers discernable and inviting architectural features, and serves the public in an aesthetically pleasing fashion.

30. Mr. Witt testified that a flat roof design is proposed for aesthetics and to screen mechanical equipment from public view, such as refrigeration and HVAC units.

31. Plaintiff then presented testimony at the hearing on June 19, 2019, from Nathan Mosley, P.E. of Shropshire Associates, LLC.

32. Mr. Mosely offered testimony concerning his April 25, 2019 Traffic and Parking Assessment Reports.

33. From a parking and traffic analysis standpoint, Mr. Mosley testified that the proposed Dunkin Donuts, based upon a morning peak use, would be complementary to the other three proposed retail stores.

34. Mr. Mosley testified that 80% of all traffic patronizing the Dunkin Donuts was anticipated to use the drive-thru and that the proposed drive-thru lane was designed to permit queuing for up to nine (9) motor vehicles, with average queuing being four (4) to five (5) motor vehicles and six (6) vehicles during the peak hour.

35. Mr. Mosley also offered testimony addressing the adequacy of parking as provided in the proposal.

36. Based on the Shropshire Report, Mr. Mosley testified that the anticipated change in total trip generation was insignificant and would not adversely impact traffic, because Dunkin Donuts relies upon "pass by" traffic, meaning it would pull most trips from patrons already traveling along Taunton and Tuckerton roads.

37. Board members questioned the proposed left-turn movement onto Taunton Road and if motor vehicles would stack due to proximity to the Intersection.

38. Mr. Mosley testified that the proposed full movement access on Taunton Road was approved by Burlington County and stacking was not anticipated because the driveway was 150 feet away from the Tuckerton/Taunton Road signalized intersection.

39. Mr. Mosley further explained that, based on the study, the maximum queue for the left-turn outbound movement onto Taunton Road during the peak hour is approximately one (1) vehicle, with one (1) vehicle making the movement once every two minutes.

40. Board members also commented that it would be preferable to have a by-pass lane for the Dunkin Donuts to provide an escape route in the event customers abandon a drive-thru trip. Plaintiff subsequently modified the plan and added a full by-pass lane.

41. The hearing on June 19, 2019 concluded earlier than usual at the request of public safety officials due to severe weather conditions, and the hearing was continued on July 17, 2019.

42. At the continuation of the hearing, Mr. Elko described proposed changes to the Application, based on comments made at the first hearing and from the reports of the Zoning Board engineering and planning professionals.

43. Mr. Elko testified that Plaintiff had modified the plans to include a by-pass lane; an extended queue length for motor vehicles; a wider trash enclosure; a sidewalk of 5-foot width along the Taunton Road frontage; additional outdoor seating; pedestrian access routes; a bike rack and outside trash receptacles; four parking spaces were eliminated; and total impervious coverage on-site was reduced from 70% to 62.3%, using porous paving.

44. Plaintiff also submitted a Vehicle Circulation Plan showing adequate queueing distances for vehicles at the drive-thru and demonstrating that a tractor-trailer could navigate the parking lot for early morning deliveries.

45. Mr. Elko also revised the plans to augment the proposed buffer to 19.9 feet.

46. Mr. Elko further testified that an illustrative example of proposed retail to be located at the Property might include a phone store, nail salon and sandwich shop, all of which are uses that would be compatible and synergistic with the Dunkin Donuts.

47. Plaintiff next presented testimony from Allen Laurer, the proposed operator of the Dunkin Donuts.

48. Mr. Laurer testified that he operates 22 Dunkin Donut locations and has been involved in this type of retail activity since 1966.

49. Mr. Laurer testified that the Dunkin Donuts would have one major delivery per week, and donuts are delivered daily after 10:00 pm via box truck.

50. Mr. Laurer testified that the proposed Dunkin Donuts is projected to process 600 transactions per day, with 300 transactions occurring between the hours of 6-9 AM. Mr. Laurer testified that the target time for processing a drive-thru transaction is 1 minute, 45 seconds.

51. Mr. Laurer stated that the food preparation would include no fryers, but rather a commercial microwave would be utilized for sales of sandwiches. Coffee would be brewed on site. Donuts, muffins and bagels would be prepared off site and delivered daily.

52. Plaintiff then presented testimony from a professional planner, James A. Miller, P.P., in support of the use variance and requested bulk variances.

53. Mr. Miller opined that the Property is particularly suitable for the proposed Dunkin Donuts because, among other reasons, of its location at an intersection in a commercial

node, fully developed at all four (4) corners, and that the Zoning Board had previously made findings in a prior resolution that the subject property was amenable for AM peak uses due to existing traffic flow.

54. Mr. Miller opined that the Dunkin is not a typical “fast-food restaurant,” such as the type of operation that the ordinance sought to prohibit; that it would generate significantly less parking demand due to the high concentration of drive-thru traffic; it would generate traffic impacts comparable to permitted uses in the CC Zone; provides sufficient buffers areas given the undersized nature of the parcel; and would provide for an adaptive reuse of a site formerly occupied by a PNC Bank. Mr. Miller thus opined that the purposes of zoning would be advanced by the Application as per N.J.S.A. 40:55D-2(a) and (g).

55. Mr. Miller offered such testimony both in support of the use variance as well as the requested “C” bulk variances, which were necessary because the subject property is undersized and cannot meet the required buffers.

56. Mr. Miller further testified that the proposed use would be consistent with and would not negatively impact the Zone Plan, which allows for a wide variety of retail uses, and that the use would not create a substantial detriment to the public good.

57. Mr. Miller further testified that other drive-thru facilities such as the Rite Aid at Taunton Forge Shopping Plaza and the former bank on the subject Property have not caused adverse impacts in the CC Zone.

58. Mr. Miller opined that the Application thus satisfied the enhanced Medici use variance criteria, since the Property was particularly suited for the use; the impacts of the proposed use would be comparable to permitted shopping center uses; and, in his opinion as a

professional planner, it would be appropriate for the Board to approve the Application and the requested variances.

59. After Plaintiff's presentation, and after hearing from the Board's own Engineer and Planner, the Board opened the hearing to comments from the public.

60. During the public period, several residents opined that existing, morning rush hour traffic on Tuckerton and Taunton Roads is already too congested.

61. Another resident suggested that the Dunkin Donuts be approved for use across the street at the Taunton Forge Shopping Plaza, where the Board already denied a previous application for the same use.

62. At the conclusion of the public comment period, Plaintiff responded to the comments from the Board and the public and proposed the following additional modifications in support of its request for approval:

- A. Restrict left-turns onto Taunton Road from the hours of 7 AM to 9 AM, six (6) days a week; and
- B. Reduce the dimensions of the proposed building by 500 square feet and reduce lot coverage from 71.4% to approximately 70%; and
- C. Provide enhanced landscaped buffering including mature trees within the buffer area; and
- D. Limit the adjoining proposed retail uses to one sandwich shop and the size of such retail units to no greater than 1,800 square feet each, to further reduce traffic and parking impacts.

63. A motion was then made by a Board Member to approve the modified application. The motion was seconded to put to a vote.

64. Two (2) board members voted in the favor of approving the application; however, the remaining five (5) members of the Board voted to deny the use variance and bulk variance relief.

65. The motion to approve the use variance therefore failed to carry, resulting in a denial of the Application.

66. The Denial was memorialized by Resolution #2019-21, adopted by the Board on August 21, 2019 (“Resolution”). A true and accurate copy of the Resolution is attached hereto as Exhibit A. Notice of the decision was published on August 27, 2019.

67. The Resolution states that the Zoning Board finds that the Property is not particularly suitable for a Dunkin Donuts with a drive-thru, despite the former finding in prior Resolution #2017-24 that the Property was in fact suitable and appropriate for such use.

COUNT ONE
(Arbitrary and Capricious)

68. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

69. Under the MLUL, a use variance may be granted upon a showing that the positive and negative criteria of N.J.S.A. 40:55D-70(d) are satisfied.

70. To satisfy the positive criteria, the applicant must demonstrate “special reasons” for the grant of the variance.

71. The standard of “special reasons” for the grant of “d” variances has been defined as those which advance the purposes of zoning listed in N.J.S.A. 40:55D-2.

72. If the proposed use is not one that inherently serves the public good, then special reasons are based on particular site suitability or hardship.

73. The negative criteria require proof that the variance “can be granted without substantial detriment to the public good” and that the variance “will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” N.J.S.A. 40:55D-70(d).

74. Through the information presented with the Application and the testimony presented by Plaintiff’s witnesses, along with the plans and reports that were filed with the Board, Plaintiff demonstrated that the proposed use is particularly suitable for the Property.

75. Plaintiff further demonstrated that the grant of a use variance for development of a Dunkin Donuts with a drive-thru at the Property could be granted without substantial detriment to the public good and that the variance would not substantially impair the intent and purpose of the Medford zone plan and zoning ordinance.

76. The drive-thru operations of the Rite Aid at Taunton Shopping Plaza and the former PNC Bank on the Property have not caused adverse impacts in the CC Zone.

77. The drive-thru lane represents a feature that was already present on the Property and it will not represent a significant change in on-site circulation.

78. Plaintiff established through credible evidence that the proposed Dunkin Donuts with a drive-thru would not impair the intent or purpose of the Zone Plan or zoning ordinance, as:

- A. Dunkin Donuts is not a typical fast food use as there would be no grilling or frying on the premises and, therefore, the smoke and odors ordinarily associated with fast food operations would not attend here.
- B. Half of Dunkin Donuts’ daily transactions are anticipated to occur between the morning hours of 6:00 a.m. and 9:00 a.m., unlike other “fast food” operations that also have mid-day and evening peak hours.

C. Addition of the Dunkin with a drive-thru would not have a significant or substantial impact on the surrounding properties.

D. The Dunkin with a drive-thru would enhance and encourage development of adjoining permitted uses and would aid in revitalization of the intersection.

79. Plaintiff reiterated during the hearing that the Board previously made a finding that the Property was a suitable and appropriate location for a Dunkin with a drive-thru, as set forth in Board Resolution 2017-24.

80. In other applications for similar sized coffee shops with drive-thru lanes that the Board has approved in the CC zone, the Board has made specific findings that a drive thru coffee shop is a suitable business for such commercially zoned areas; that the presence of a drive thru window would not be anticipated to significantly increase traffic in the area in comparison to a permitted use; and that a coffee shop with a drive thru is not truly in the nature of a fast food restaurant.

81. The Board's decision to deny the Application is arbitrary and contrary to its own prior findings and decisions.

82. The Board's decision to deny the Application was instead based on subjective feelings concerning traffic conditions at the intersection.

83. The New Jersey Supreme Court has held local government cannot act based on mere sentiments. Riya Finnegan v. South Brunswick, 197 N.J. 184, 192-193 (2008).

84. Zoning boards must root their findings in substantiated proofs rather than unsupported allegations. Cell S. of N.J. v. Zoning Bd. of Adjustment, 172 N.J. 75, 88, 796 (2002).

85. The Board may not unreasonably reject expert testimony based only upon bare allegations or unsubstantiated beliefs. New York SMSA v. Board of Adjustment of Weehawken, 370 N.J. Super. 319, 338 (App. Div. 2004).

86. Substantial credible evidence was presented by Plaintiff demonstrating that the Application satisfied the criteria for the requested variances.

87. The proofs presented to the Board by Plaintiff overwhelmingly satisfied the requirements for variance relief under N.J.S.A. 40:55D-70(d)(1).

88. The Board failed to act in accordance with established legal principles and the Denial improperly, unreasonably and baselessly rejects the substantial credible evidence presented by Plaintiff in support of the Application.

89. The Denial of the Application is contrary to the MLUL and contrary to sound planning and zoning.

90. The Denial of the Application is arbitrary, capricious and unreasonable.

WHEREFORE, Plaintiff requests the entry of judgment against the Board as follows:

- (a) Reversing and vacating the Denial and Resolution;
- (b) Declaring that the Application is approved;
- (c) For compensatory damages, interest, costs and counsel fees; and
- (d) For such other and further relief as the Court may deem just and proper.

COUNT TWO
(Equal Protection)

91. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

92. The Board's action in denying the use variance Application for the Property, while approving other use variance applications for similar uses in the same zoning district as the Property, fails to treat similarly situated persons and property equally, and thus violates the equal

protection guarantee inherent in the United States Constitution and Article One, Paragraph One, of the New Jersey Constitution.

93. The Denial of the use variance for development of a Dunkin Donuts with a drive-thru at the Property violates Plaintiff's rights to equal protection under the law.

WHEREFORE, Plaintiff requests the entry of judgment against the Board as follows:

- (a) Reversing and vacating the Denial and Resolution;
- (b) Declaring that the Application is approved;
- (c) For compensatory damages, interest, costs and counsel fees; and
- (d) For such other and further relief as the Court may deem just and proper.

COUNT THREE
(Improper Resolution)

94. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

95. The MLUL at N.J.S.A. 40:55D-10(g) requires the Board to set forth findings of fact and conclusions regarding the Application by way of a written resolution adopted at a meeting of the Board.

96. Resolution #2019-21, adopted by the Board on July 19, 2019, purports to set forth reasons for the Denial that were not stated on the record by any of the Board members or professionals.

97. Contrary to the MLUL, the Resolution contains findings and conclusions which the Board did not make contemporaneously and which are not supported by the record of the proceedings before the Board.


WHEREFORE, Plaintiff requests the entry of judgment against the Board as follows:

- (a) Reversing and vacating the Denial and Resolution;
- (b) Declaring that the Application is approved;

- (c) For compensatory damages, interest, costs and counsel fees; and
- (d) For such other and further relief as the Court may deem just and proper.

Dated: October 10, 2019

HYLAND LEVIN SHAPIRO LLP


By: 
Robert S. Baranowski, Jr.
Attorneys for Plaintiff

CERTIFICATION PURSUANT TO R. 4:5-1

Robert S. Baranowski, Jr., Esq., of the law offices of Hyland Levin Shapiro LLP, attorneys for Plaintiff, certifies that at this time, upon information and belief, this matter in controversy is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding, that no other action or arbitration proceeding is contemplated at this time, and that Plaintiffs are not aware of other parties to be joined at this time.

Dated: October 10, 2019

HYLAND LEVIN SHAPIRO LLP

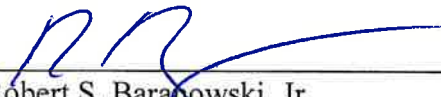
By: 
Robert S. Baranowski, Jr.,
Attorneys for Plaintiff

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Robert S. Baranowski, Jr., Esq. is hereby designated as trial counsel on behalf of Plaintiff.

Dated: October 10, 2019

HYLAND LEVIN SHAPIRO LLP

By: 
Robert S. Baranowski, Jr.
Attorneys for Plaintiff

CERTIFICATION PURSUANT TO RULE 4:69-4

I hereby certify that all necessary recordings of local agency proceedings in the cause have been ordered by Plaintiff and upon receipt of same, transcripts will be ordered by Plaintiff.

Dated: October 10, 2019

HYLAND LEVIN SHAPIRO LLP

By: 
Robert S. Baranowski, Jr.
Attorneys for Plaintiff

EXHIBIT A

EXHIBIT A

**MEDFORD TOWNSHIP
ZONING BOARD OF ADJUSTMENT
RESOLUTION #2019-21**

**DePetrìs Family Associates 2, LLC
Village at Taunton Forge - 200 Tuckerton Road
(Block 2702.01, Lot 12.03)
Denial of Use Variance and Certain Bulk Variances
To Permit Construction Of 6,379 Square Foot Retail Building For Up To Four Tenants,
Including A Dunkin Donuts With Drive-Thru
ZVE-1044**

WHEREAS, Applicant DePetrìs Family Associates 2, LLC requests Use Variance Approval and certain bulk variances to permit construction of a 6,379 square foot retail building for up to four (4) tenants, including a Dunkin Donuts with drive-thru at real property, located at 207 Tuckerton Road, which is more particularly described Block 2702.01, Lot 12.03 on the Medford Township Tax Map; and,

WHEREAS, Applicant provided public and personal notice in accordance with the Land Development Ordinance of the Township of Medford and the statutory requirements of N.J.S.A. 40:55D-12; and

WHEREAS, after hearing and considering the exhibits filed with the Application (See attached Exhibits List), testimony from the Applicants' principals, the proposed Dunkin Donuts operator, Applicant's professional engineer, traffic engineer, architect and planner, and the arguments of Applicant's attorney, as well as the reports and testimony of the Zoning Board Planner and Engineer at public hearings on June 19, 2019 and July 17, 2019, and significant comments from nearby residential areas, the Zoning Board finds as follows:

1. At the June 19, 2019 hearing Applicant requests Use Variance Approval and certain bulk variances to permit demolition an existing building previously occupied by PNC Bank and allow for construction of a 6,479 square foot retail building for up to four (4) tenants, including an 1,804

square foot Dunkin Donuts with drive-thru. The subject property consists of 0.912-acres and is located at the northwest corner of the intersection of Taunton Road (County Route 623) and Tuckerton Road (County Route 620) in the Commercial Community (CC) Zoning District. A portion of the subject property is proposed to be dedicated to Burlington County resulting in a lot-size reduction of the parcel to 0.898-acres.

2. In support of the application, Applicant has submitted plans illustrating a proposed architectural concept, along with a conceptual design for parking spaces, circulation drives, drive-thru, and possible stormwater management locations. Use Variance approval is required because the proposed addition of a drive-thru renders the Dunkin Donuts a fast-food restaurant under the Medford Township Land Development Ordinance. Subsequent to June 1, 1992, fast food restaurants are not a permitted use in the CC Zone pursuant to Section §411A:20 of Land Development Ordinance.

3. At the June 19, 2019 hearing, Applicant also requests the following bulk variances, which are related to the undersized nature of the parcel and the proposed retail building design: a) minimum lot area with drive-thru (2.5 acre required for drive-thru conditional use; 1 acre in the CC Zone; 0.898 acres proposed); b) minimum lot frontage (300' required for the conditional use; 153.9' proposed); c) parking (95 spaces required for the conditional use; 33 spaces provided); d) minimum lot buffers (40' required; 18.6' provided from Taunton Road, where currently 34' is provided; 17.2' from Tuckerton Road, where currently 0' is provided; 14.4' from the corner of Taunton and Tuckerton Roads); e) minimum rear buffer (15' required; 8.8' proposed); f) minimum side-yard buffer (15' required; 10.1' proposed); g) maximum permitted lot coverage (63% permitted with amenity areas, plazas, and other similar design features; 70.9% proposed); h) building roof height requirements (maximum permitted height 27'; proposed height exceeding

27'); and i) building roof type (full gable required; none provided) (flat roof not permitted; flat roof proposed)c(roof pitch 5:12 required; flat and towers proposed).

4. Surrounding uses include vacant and wooded lands to the north, commercial uses to the east across Taunton Road and south across Tuckerton Road in the CC Zone. Residential development is located to the east across Taunton Road and Taunton Boulevard behind the CC District.

5. At the first public hearing on June 19, 2019, Applicant presented the testimony of Jim DePetris, one of Applicant's members. Jim DePetris testified that the new proposed development may spur redevelopment of existing commercial development at the four (4) corners of the Taunton/Tuckerton Road signalized intersection (the "Intersection"). Jim DePetris described the area as an older commercial corridor in need of new retail establishments. Applicant's proposed retail development would be named Taunton Corners Place.

6. Applicant also presented the testimony of its professional engineer, Greg Elko, P.E. at the June 19, 2019 public hearing (the "First Hearing"). Mr. Elko testified that the subject property contains the former PNC Bank building, which has two existing access driveways on Tuckerton and Taunton Road. Mr. Elko described the surrounding uses as a wooded undeveloped lot to the northeast; the Braddock Building (an office building) and Taunton Shopping Plaza on Tuckerton Road to the north; and the Riviera Pizza shopping center; and WaWa and Shell Gasoline Station to the south.

7. Mr. Elko testified that the proposed drive-thru lane for the Dunkin Donuts would run counterclockwise commencing near the drive-entrance at Taunton Road. Mr. Elko further testified that Applicant proposes a full-access drive entrance on Taunton Road with a limited right-in and right-out drive entrance on Tuckerton Road. Mr. Elko testified that, in preliminary meetings with

the Burlington County Planning Board Engineering Department, the County has indicated it would likely approval a full movement access on Taunton Road, subject to striping a new left-turn lane into the site from Taunton Road. Mr. Elko testified that Applicant would propose stormwater management improvements for the site to comply with ordinance requirements that would be later be reviewed by the Zoning Board at the time of application for site plan approval.

8. Mr. Elko testified at the First Hearing that the subject property is undersized (i.e. 0.912 acres existing; 0.89 acres proposed after right-of-way dedication to County; 2.5 acres required for retail with drive-thru). Mr. Elko further testified that due to the undersized nature of the property, lot coverage requirements could not be met for the proposed Dunkin Donuts with three additional retail stores (60% permitted with allowance of 63% with outdoor amenities; 70.9% proposed). Mr. Elko testified at the First Hearing that no by-pass lane is proposed adjacent to the drive-thru because it would otherwise increase lot coverage to an even more nonconforming 74%. Mr. Elko testified that new additional greenspace would be provided along property frontage at Tuckerton Road, where 0' is provided and approximately 17' is proposed. Buffers are reduced on Taunton Road to 18.6'

9. Applicant's professional architect testified that a flat roof design is proposed for aesthetics and to screen mechanical equipment from public view, such as refrigeration, heating and air conditioning units. Applicant's architect indicated that specific building materials, colors and tones would be later refined and addressed at the time of application for site plan approval. Applicant's architect presented conceptual plans for signage, which he opined would be more attractive than existing signage at other retail locations at the corners of the Intersection.

10. Applicant's Traffic Engineer, Nathan Mosley, P.E. of Shropshire Associates, LLC, testified at the First Hearing concerning his April 25, 2019 Traffic and Parking Assessment Report.

Mr. Mosley testified that the proposed Dunkin Donuts, from a parking and traffic analysis, would be complementary to the other three proposed retail stores, based upon its AM peak use. Mr. Mosley testified that 95% of Dunkin Donuts traffic is during the AM peak hours (i.e. between 7:15 and 8:15 AM) during weekdays and 70% on Saturdays. Mr. Mosley testified that 17% less traffic exists at the Intersection during the morning commute and that the proposed Dunkin Donuts would increase overall traffic at the Intersection by 1-3%.

11. Mr. Mosley testified that 80% of all traffic patronizing the Dunkin Donuts would use the drive-thru. Mr. Mosley testified that the proposed drive-thru lane has been designed to permit queuing for up to nine (9) motor vehicles. He testified that the average queuing would be 4-5 motor vehicles with six (6) motor vehicles during the peak hour. Mr. Mosley testified that a maximum queuing of ten (10) vehicles could occur for a one minute time period.

12. Mr. Mosley testified that the proposed access drive on Taunton Road is located 150-feet from the Tuckerton/Taunton Road traffic-light intersection. Board Member Robert Simmers expressed his concern of a traffic safety issue with left-turn movement into the drive entrance on Taunton Road only 150-feet from the intersection. Board member Simmers queried if motor vehicles would stack to the Intersection. Applicant's Traffic Engineer, Mr. Mosley, indicated that Mr. Simmer's concern was a legitimate one and that Applicant would address it the second public hearing on July 17, 2019 ("Second Hearing").

13. At the First Hearing, board members also raised significant concerns with the concept plan design that did not include a "pass-by lane" for the Dunkin Donuts. Board members expressed concern that certain patrons might spontaneously abandon a drive-in trip to Dunkin Donuts and must be afforded an escape route.

14. Between the First and Second Hearing, Applicant reviewed Board Member Simmers' concern with a full movement access on Taunton Road. In a July 3, 2019 Report from Langan Engineering, Applicant's engineer opined: "...the Taunton and Tuckerton Road signalized intersection currently operates at a Level of Service 'F' during the AM and PM peak hours and Level of Service 'D' during the midday Saturday peak hour. Under Build conditions, the level of Service during the AM and PM peaks will remain the same, but the Saturday peak level of service will drop to a level of service 'E'." In addition, "...the Tuckerton Road site access will operate at a LOS C during the AM peak hour and LOS B during the PM and Saturday peak hours. The Taunton Road access, which is a full access, is anticipated to operate at a LOS D during the AM peak hour and LOS C during the PM and Saturday peak hours."

15. At the Second Hearing, Applicant's Engineer Greg Elko provided a summary of proposed changes to the application, based on comments the Applicant received at the First Hearing and from the reports of the Zoning Board engineering and planning professionals. Mr. Elko testified that Applicant had modified the conceptual plans as follows: a by-pass lane was added; the pickup station at the Dunkin Donuts was relocated to allow to extend queuing length for motor vehicles; the trash enclosure was widened; sidewalk of 5-foot width was added along the Taunton Road frontage; additional outdoor seating is provided; angled pedestrian access routes would be included with details to be provided at the time of application for site plan approval; a bike rack and outside trash receptacles have been added; four parking spaces were eliminated (29 parking spaces provided; 94 parking spaces required); and total impervious coverage on-site has been reduced from 70 to 63%, using porous paving. Applicant also submitted a Vehicle Circulation Plan (Exhibit A-21) showing adequate queueing distances for vehicles at the drive-thru and demonstrating that a tractor-trailer could navigate the parking lot for early morning deliveries.

16. At the Second Hearing, Mr. Elko testified that Applicant cannot meet the buffer requirements of the Land Management Ordinance for this site, because to do so, would require buffering encompassing 47% of the entire lot. Mr. Elko testified that Applicant has increased the buffer to 19.9 feet of the 40-foot buffer required. Mr. Elko further testified that, while the other retail tenants have yet to be determined, an illustrative example of proposed retail might include a phone store, nail salon and sandwich shop. Mr. Elko also testified that porous pavement has been added to the parking areas to reduce impervious coverage. However, such testimony elicited the Zoning Board Engineer to comment that such improvement would not reduce the proposed exceedance of lot coverage, which would remain over 70%, at 71.4%.

17. Applicant then presented testimony from Allen Laurer, the proposed operator of the Dunkin Donuts. Mr. Laurer testified that he currently operates 22 Dunkin Donut locations and has been involved in this type of retail activity since 1966. Mr. Laurer testified that the Dunkin Donuts would have one major delivery per week, and donuts are delivered daily after 10:00 pm via box truck. He further indicated that his Dunkin Donuts has agreed to restrict deliveries to box-trucks at certain locations. Mr. Laurer testified that a Dunkin Donuts usually processes 600 transactions per day, with 300 transactions occurring between the hours of 6-9 AM. Mr. Laurer testified that the target time for processing a drive-thru transaction is 1 minute, 45 seconds. Mr. Laurer testified that the proposed Dunkin Donuts would staff five (5) employees during the peak hour (i.e. 5-9 AM shift), and two (2) employees otherwise. The food preparation would include no fryers, but rather a turbo-chef for commercial microwaving would be utilized for sales of sandwiches. Coffee is brewed on site in commercial brewers, and donuts, muffins and bagels are prepared off site and delivered daily. Mr. Laurer testified that trash pickup would occur 1-2 times per week, depending on what the other retail tenants will be. Staff will pick up litter on site 2x per day.

18. At the Second Hearing, Applicant's Traffic Engineer, Nathan Mosley, P.E., provided supplemental expert testimony. Mr. Moseley testified that traffic and parking counts for a Dunkin Donuts at Route 541/Church Road in Medford were conducted on June 25, 2019. Mr. Moseley indicated peak parking demand was for eight (8) of the nineteen (19) spaces at this other Medford Dunkin Donuts location. Mr. Mosley testified that the peak of motor vehicle stacking in the drive-thru was eight (8) motor vehicles with an average queue length of 4-6 motor vehicles. Mr. Mosley estimated that for a 5,000 square foot retail shopping center, anticipated trips would be 12 per 1,000 square feet of retail space.

19. Mr. Mosley testified that the Burlington County Engineering Department has indicated it would require additional striping for a new left-turn lane into the Dunkin Donuts from Taunton Road for vehicles from the Intersection. Mr. Mosley indicated that this left-turn movement from Taunton Road would service thirty (30) motor vehicles per hour. With a distance of 150 feet from the Taunton/Tuckerton traffic-light intersection, Mr. Mosley opined that it would not create a stacking issue at the Intersection.

20. In response to this testimony, Board members expressed concern that, while such stacking may not back-up traffic to the Intersection, it would make a left-turn movement out of the Dunkin Donuts onto Taunton Road significantly more difficult. Board member Martin Hamilton opined it would create a new and unsafe turning movement. Board member Chris Benstead concurred and indicated that he would only consider approval of requested use variance if Applicant would accept a condition prohibiting left-turn movements onto Taunton Road from the Dunkin Donuts. Zoning Board Engineer Chris Noll then commented that twenty (20) vehicles would be making a left-turn out of the Dunkin Donuts onto Taunton Road every hour. Mr. Mosley testified that it would take approximately 26 seconds to make a left-turn movement onto Taunton Road.

21. Mr. Mosley testified that the Dunkin Donuts would utilize only eight (8) of the twenty-nine (29) parking spaces proposed for the shopping center. Mr. Moseley further testified that the AM Peak nature of the Dunkin Donuts would reduce the potential for any parking conflict with other retail tenants.

22. Applicant then presented testimony from its professional planner, Jim Miller, P.P., in support of the use variance and requested bulk variances. Mr. Miller opined that the subject property was particularly suitable for the proposed Dunkin Donuts and up to three (3) additional retail stores because of its location at an intersection, which is a commercial node, fully developed at all four (4) corners. Mr. Miller noted that the Zoning Board had previously made findings in a prior resolution that the subject property was more amenable for AM peak uses due to existing traffic flow. Mr. Miller testified that the Dunkin Donuts is not a typical fast-food restaurant as that concept had developed in the 1990's. Mr. Miller opined that the AM peak use would be compatible with PM peak retail uses; would have a smaller building footprint of 1,500-1,800 square feet; would generate significantly less-parking demand due to the high concentration of drive-thru traffic; would not generate odors or littering problems; would implement noise attenuation at the drive-thru ordering location; would create acceptable traffic impacts comparable to other permitted uses in the CC Zone; would provide sufficient parking for the Dunkin Donuts; is designed to adequately manage stacking internally within the parking lot area; provides sufficient buffers areas given the undersized nature of the parcel; and would provide for an adaptive reuse of a site formerly occupied by a PNC Bank, which could potentially spur further redevelopment of retail use at the four corners of the Intersection. Mr. Miller opined that the purposes of zoning would be advanced at *N.J.S.A. 40:55D-2(a)* and (g).

23. In support of the requested "C" bulk variances, Mr. Miller testified that the subject property is undersized and cannot meet the required buffers for intersection corner parcels. Such planning testimony caused Zoning Board Vice Chairman, Salvatore Cocivera, to query why Applicant has not considered eliminating some or all of the three (3) proposed additional retail spaces to reduce the extent of bulk variance relief and other potential adverse impacts from allowing such concentrated development of the subject property.

24. Mr. Miller further testified that the proposed use would be consistent with the Zone Plan, which allows for a wide variety of retail uses, and only prohibits the drive-thru. Mr. Miller further testified that the Enhanced Medici Criteria is met for the use variance, since the impacts of the proposed use would be comparable to permitted shopping center uses. Mr. Miller further testified that the drive-thru's at the Rite Aid at Taunton Shopping Plaza and the former bank on this site have not caused adverse impacts in the CC Zone.

25. The Zoning Board Planner, Michelle Taylor, reviewed her July 11, 2019 Report at the Second Hearing. Ms. Taylor opined that the proposed 71.4% lot coverage significantly exceeds the permitted standard of 63% with outdoor amenities, and appears "excessive" at over 11.4%. She further testified that Zone Plan for the CC Zone contemplates a significant buffer for the corner lot, and with a 0.89-acre lot size, it is no surprise that at least 40% of the parcel must be retained for buffer purposes as the lot coverage maximum permitted is 60%. She also opined that buffers would be negatively impacted by stormwater controls. Ms. Taylor further opined that other properties in the CC Zone that have drive-thru's (i.e the Starbucks and McDonalds on Stokes Road/Route 541) are not in proximity to residential areas as this potential site location; and may be negatively impacted by the over night deliveries and trash removal and early operating hours.

26. The Zoning Board Engineer, Christopher Noll, P.E. testified that the parking requirement of 94 spaces for the proposed uses seems excessive. Mr. Noll further confirmed Mr. Mosley's testimony that the left-turn onto Taunton Road would be 26 seconds. Mr. Noll recommended that any approval, if considered, should be subject to cross-access easements with the adjoining property on Tuckerton Road (i.e. the Braddock Building). Mr. Noll also suggested that a gap study be undertaken to determine if there are sufficient gaps to allow a left turn from the site onto northbound Taunton Road.

27. During the public portion, several neighbors from nearby residential areas in Lake Pine and Oakwood, testified in opposition to the requested use variance and bulk variance relief. Jill Neall, of 208 Taunton Boulevard (in Lake Pine), testified that the existing traffic congestion at the Intersection makes the proposed four (4) retail uses too intense on this undersized lot.

28. Mary Ann Brooks, of 38 Red Oak Trail (in Oakwood) testified that traffic congestion at the Intersection is already a problem during the morning rush hour with motor vehicles stacked to the Tamarac residential subdivision on Tuckerton Road. Ms. Brooks also commented that Applicant is the long-time owner of the Taunton Shopping Plaza, which has had five (5) retail vacancies for several years now. Ms. Brooks questioned the need for adding new retail space across the street when existing retail vacancies remain available in the immediate neighborhood.

29. Clark Perks, of 147 West Centennial Drive, testified that there is significant need to reestablish a landscaped buffer along the intersection after the tree clearing of the Taunton Shopping Plaza perimeter by Applicant several years ago. Mr. Perks was concerned that a sufficient landscaped buffer could not be provided on this undersized lot.

30. Andrew Genco, of 87 Taunton Road, testified to the traffic congestion on Taunton Road near his home. He testified that infrastructure does not exist at the Intersection to support the

proposed retail uses. Mr. Genco also questioned the suitability of the site based upon the extent of the variance relief Applicant requests for the proposed uses.

31. Lisa Mangan, of 115 Park Court East in Lake Pine, testified that the proposed development of a new strip shopping center at the Intersection reminds her of the problematic site layout and traffic conditions at the older WaWa and Lake Pine Cleaners strip shopping center. That shopping center, located on Tuckerton Road, is a similar distance from the Intersection and has a bad reputation for its existing ingress/egress and traffic congestion.

32. Eric Crane, of 85 Taunton Road, testified that a Starbucks Coffee with drive-thru was approved a few years ago on Stokes Road/Route 541 and now has significant drive-thru stacking issues with motor vehicles blocking the street. Mr. Crane expressed his concern that a similar problem could occur at this busy and traffic congested location. Mr. Crane did not believe that Applicant presented sufficient proofs in support of the requested use variance and bulk variance relief.

33. Medford Township resident and former Medford Township police officer Jeff Wagner testified that allowing three (3) additional retail stores on an undersized 0.9 acre parcel, when a 2.5 acre minimum lot size is required is problematic. Mr. Wagner further opined that he is familiar with traffic conditions at the location from his years on the Medford police force and believes that a restriction of left-turns out of the Dunkin Donuts onto Taunton Road would be necessary. Mr. Wagner suggested that Applicant pursue the acquisition of additional lands to provide additional needed traffic improvements and reduce the need for requested variance relief.

34. Sarkis Euksuzian, the owner of the adjoining parcel at 205 Tuckerton Road, testified that his adjacent property is for sale and could provide additional lands for improvements.

35. At the conclusion of the public comment period, Applicant requested a recess to consider modifications to its use variance application. After the recess, Applicant proposed the following concessions in support of its request for approval: a) restrict to left-turns onto Taunton Road from the hours of 7-9 AM, six days (6) days a week; b) reduce the amount of building size by 500 square feet to reduce lot coverage from 71.4% to approximately 70%; c) provide enhanced landscaped buffering including mature trees within the buffer area; and d) limit to one sandwich shop and the size of retail tenant units to no greater than 1,800 square feet to reduce traffic and parking impacts.

36. A motion was then made by board member, Lucinda Lane, to approve the modified application. Only two (2) board members voted in favor of approving the application and five voted to deny the use variance and bulk variance relief, resulting in a statutory denial.

37. The Zoning Board finds and concludes that the subject property, located at the corner of a heavily traffic congested intersection, and significantly undersized at 0.898 acres, is not particularly suitable for four (4) retail uses, including a Dunkin Donuts with a drive-thru.

38. The Zoning Board finds that Applicant's proposed plan for a full movement access at Taunton Road creates an unsafe ingress/egress and inefficient traffic circulation for motor vehicles attempting a left-turn movement from the Dunkin Donuts onto Taunton Road. This Zoning Board finding is supported by board members' personal knowledge of existing conditions at this highly-trafficked intersection and their understanding that the zoning prohibition of drive-thru's in the CC Zone is based, in part, on traffic considerations.

39. The Zoning Board further finds that Applicant's desire to procure four (4) retail tenants on this undersized lot is the reason that proposed lot coverage of 70%, grossly exceeds that which is permitted in the CC Zone (60% - with allowance of 63% for outdoor amenities), which the Zoning

Board finds and concludes is unacceptable because it will result in overdevelopment of the subject property.

40. The Zoning Board finds and concludes that the extent of bulk variances relief requested highlights that Applicant is requesting variance relief to maximize its profits at the expense of the Zone Plan and Master Plan, which contemplates significant buffers for a retail use with drive-thrus at a corner location and non-excessive lot coverage.

41. The Zoning Board finds and concludes that Applicant has not met its legal burden for the bulk variance relief requested for the proposed roof design. The Zoning Board finds that the proposed flat roofs are not permitted under the Land Development Ordinance and would be inconsistent with the neighborhood scheme.

42. The Zoning Board finds and concludes that Applicant has not satisfied the “negative criteria” for the requested use and bulk variance relief, because the subject property is proposed for overdevelopment, too close in proximity to an existing and congested Intersection.

43. Lastly, the Zoning Board rejects the proofs presented by Applicant that the Zoning Board had previously endorsed this particular site for the proposed development on an earlier development application (for use variance approval of a Dunkin Donuts on a pad site at the Taunton Shopping Plaza). The Zoning Board never intimated that a Dunkin Donuts **with three (3) additional retail units** (*emphasis added*) would be particularly suitable at the PNC Bank location.

44. The Zoning Board further rejects Applicant’s planning argument that a drive-thru is appropriate at the subject property because drive-thrus already exist at the vacated PNC Bank and the Rite-Aid in the Village at Taunton Forge Shopping Plaza across the street. This is an inapplicable comparison as left turns are prohibited from this Rite Aid onto Taunton Boulevard.

The Zoning Board emphasizes that the drive-thru traffic at a Dunkin Donuts during the AM peak hour is significantly higher and more intense than drive-thru traffic at a bank and pharmacy throughout a full business day.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of the Township of Medford that the within application for Use Variance Approval and Bulk Variance Approval is hereby denied for the reasons set forth above.

ROLL CALL VOTE

Those In Favor of Motion to Approve Use Variance: 2


Those Opposed: 5

Attest:

**MEDFORD TOWNSHIP ZONING
BOARD OF ADJUSTMENT**



Beth Portocalis, Secretary

By: 

Donna Symons, ~~Vice~~-Chair

Dated: 8/22/19

Date of Denial: July 17, 2019 .

Date of Memorialization: August 21, 2019